



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 24 2006

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED
CERTIFIED MAIL No. 7004-1160-0004-8430-9920

In Reply Refer To:
EPA File No: 01R-04-R10

Peter A. Huhtala
Executive Director
Columbia Deepening Opposition Group
P.O. Box 682
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Cert. # 7004-1160-0004-8430-9920

Oliver Waldman
Executive Director
Salmon for All
P.O. Box 56
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Cert. # 7004-1160-0004-8430-9937

Re: PARTIAL REJECTION/REQUEST FOR CLARIFICATION

Dear Mr. Huhtala and Mr. Waldman:

This is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is partially rejecting and seeking clarification regarding your January 22, 2004, administrative complaint. Your complaint was filed against the U.S. Army Corps of Engineers (Corps), the Oregon Department of Environmental Quality (ODEQ), the Washington Department of Ecology (Ecology), and the Oregon Department of Land Conservation and Development (DLCD). The complaint was filed on behalf of the low-income, Hispanic and Native American populations in Oregon and Washington. The complaint alleges that the Corps, ODEQ, Ecology, and the DLCD have violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and EPA's regulations implementing Title VI, found at 40 C.F.R. Part 7.

Under Title VI, a recipient of Federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's Title VI administrative regulations, OCR conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's Title VI regulations. First, it must be in writing. 40 C.F.R. § 7.120(b)(1). Second, it must describe alleged discriminatory acts that violate EPA's Title VI regulations (*i.e.*, an

alleged discriminatory act based on race, color, or national origin). *Id.* Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). Fourth, it must be filed against an applicant for, or a recipient of, EPA financial assistance that committed the alleged discriminatory act. 40 C.F.R. § 7.15. (A copy of EPA's nondiscrimination regulations is enclosed for your convenience.)

For reasons listed below, OCR is rejecting the complaint in part and requesting clarification on one allegation. Please note that OCR must reject any allegations concerning discrimination against low income populations because neither Title VI nor EPA's Title VI regulations address such groups.

Complaint Allegations

- 1. The January 2003, US Army Corps of Engineers *Final Supplemental Integrated Feasibility Report and Environmental Impact Statement*, specifically the discussion on environmental justice, was issued in error.**

In January 2003, the Corps examined environmental concerns about a channel deepening project on the Columbia and Willamette Rivers. The project action plan was to dredge and dispose of riverine sediments to improve navigational opportunities on the two rivers. Your complaint states that the Corps erred in issuing its *Final Supplemental Integrated Feasibility Report and Environmental Impact Statement*, because it did not properly address the environmental justice concerns of the minority populations located downstream and near the coast of the Columbia River and Willamette River. Likewise, you allege that the Corps erred in its temporary site designations pursuant to Sections 102 and 103 of the Marine Protection, Research and Sanctuaries Act. Further, the complaint states that the rockfish, crab, salmon, sturgeon, and other harvested marine life would be adversely impacted by channel deepening project.

OCR cannot accept this allegation for investigation because Title VI and EPA's Title VI regulations do not apply to federal agencies, as you noted in your complaint. In addition, it does not meet the jurisdictional requirement of timeliness. A complaint must be filed no later than 180 days after the date of the alleged discriminatory act. The alleged discriminatory act described in this allegation occurred more than 180 days before the filing of this complaint. Therefore, OCR cannot accept this allegation for investigation. To the extent issues exist concerning Executive Order 12,898, each agency is responsible for its own compliance with the Order. EPA does not have authority to enforce the Order at other agencies.

- 2. The Oregon Department of Environment Quality (ODEQ) erred in issuing its Water Quality Certification under the federal Clean Water Act, and Coastal Zone Management Consistency Determination, dated June 23, 2003, because environmental justice and discrimination concerns were not adequately addressed.**

Your complaint states that on June 23, 2003, ODEQ erred in issuing its Water Quality Certification, under the federal Clean Water Act § 401 and § 404 for Oregon and Washington State, and Coastal Zone Management Consistency Determination, for the North Jetty disposal site and for discharge of dredged materials in the Columbia and Willamette Rivers. Specifically, you allege that ODEQ did not adequately address the complainants' environmental justice and discrimination concerns. OCR cannot accept this allegation for investigation because it does not meet the jurisdictional requirement of timeliness. A complaint must be filed no later than 180 days after the date of the alleged discriminatory act. The alleged discriminatory act described in this allegation occurred more than 180 days before the filing of this complaint. Therefore, OCR cannot accept this allegation for investigation.

- 3. The Washington Department of Ecology (Ecology) erred in issuing its Water Quality Certification under the federal Clean Water Act, and Coastal Zone Management Consistency Determination, dated June 23, 2003, because environmental justice and discrimination concerns were not adequately addressed.**

Your complaint states that on June 23, 2003, Ecology erred in issuing its Water Quality Certification under the federal Clean Water Act § 401 and § 404 for Oregon and Washington State, and the Coastal Zone Management Consistency Determination, for the North Jetty disposal site and for discharge of dredged materials in the Columbia and Willamette Rivers because Ecology did not adequately address the complainants' environmental justice and discrimination concerns. OCR cannot accept this allegation for investigation because it does not meet the jurisdictional requirement of timeliness. A complaint must be filed no later than 180 days after the date of the alleged discriminatory act. The alleged discriminatory act described in this allegation occurred more than 180 days before the filing of this complaint. Therefore, OCR cannot accept this allegation for investigation.

- 4. The Oregon Department of Land Conservation and Development (DLCD) erred in issuing removal and fill permits because environmental and discrimination concerns were not adequately addressed.**

The complaint alleges that DLCD issued removal and fill permits without adequate environmental justice and discrimination considerations. OCR is seeking clarification to determine whether this allegation meets EPA's jurisdictional requirements. Specifically, the date that DLCD issued a removal and/or fill permit for the channel deepening project must be provided to determine whether the allegation meets EPA's jurisdictional requirement for timeliness. Please provide the requested date(s) within 30 days of your receipt of this letter. If this information is not provided within this period, OCR will not accept this allegation for investigation.

If you have any questions, please contact Ms. Helena Wooden-Aguilar of my staff by telephone at (202) 343-9681, by e-mail at Wooden-Aguilar.Helena@epa.gov, or by mail to the U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,



Karen D. Higginbotham
Director

Enclosure

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